



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9870]

RIN 1545-BO66

Regulations Regarding Advance Payments for Goods and Long-term Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that streamline IRS regulations by removing regulations that are no longer necessary after the enactment of recent tax legislation. Specifically, these final regulations remove existing regulations regarding advance payments for goods and long-term contracts. These final regulations affect accrual method taxpayers who receive advance payments for goods, including those for inventorable goods.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: These regulations apply for taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Charles Gorham, (202) 317-5091, or Joanna L. Trebat, (202) 317-6890.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602), under section 451 of the Internal Revenue Code (Code) relating to the treatment of advance payments for goods and long-term contracts. On October 15, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-104872-18) in the **Federal Register** (83 FR 51904) containing proposed regulations under section 451 of the Code (proposed regulations).

The Treasury Department and the IRS received no written or electronic comments responding to the proposed regulations. Accordingly, no public hearing was held on the proposed regulations. This Treasury Decision adopts the proposed regulations without modification.

Explanation of Provisions

These final regulations remove §1.451-5, and its cross-references, relating to the treatment of advance payments for goods and long-term contracts under section 451. Section 1.451-5 generally allowed accrual method taxpayers to defer the inclusion of income for advance payments for goods until the taxable year in which they were properly included in income under the taxpayer's method of accounting for federal income tax purposes if that method resulted in the advance payments being included in gross income no later than when the advance payments were recognized in gross receipts under the taxpayer's method of accounting for financial reporting purposes.

Section 13221 of "the Tax Cuts and Jobs Act (TCJA)," Public Law 115-97 (2017), amended section 451 by redesignating section 451(b) through (i) as (d) through (k) and adding new subsections (b) and (c). New section 451(c) generally requires an accrual

method taxpayer that receives any advance payment described in section 451(c)(4) during the taxable year to include the advance payment in income in the taxable year of receipt or make an election to: (1) include any portion of the advance payment in income in the taxable year of receipt to the extent required under new section 451(b); and (2) include the remaining portion of the advance payment in income in the following taxable year.

New section 451(c) and its election to defer advance payments override the deferral method provided by §1.451-5. See H.R. Rep. No. 115-466, at 429 n.880 (2017) (Conf. Rep.). Accordingly, these final regulations remove §1.451-5 and its cross references. Removing §1.451-5 ensures that the new deferral rules of section 451(c) apply uniformly and consistently to all taxpayers and simplifies tax administration. The rules of section 446 regarding changes in methods of accounting apply to taxpayers changing a method of accounting for advance payments from a method described in §1.451-5 to another method of accounting.

Effective/Applicability Date

These final regulations apply for taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not

apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately \$150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Drafting Information

The principal author of these final regulations is Joanna L. Trebat, Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1 – INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.381(c)(4)-1 is amended by revising the second sentence of paragraph (b)(2) to read as follows:

§1.381(c)(4)-1 Method of accounting.

* * * * *

(b) * * *

(2) * * * The installment method under section 453, the mark-to-market method under section 475, the amortization of bond premium under section 171, the percentage of completion method under section 460, the recurring item exception of §1.461-5, and the income deferral method under section 455 are examples of special methods of accounting.* * *

* * * * *

Par. 3. Section 1.382-7 is amended by revising the third sentence of paragraph (a) to read as follows:

§1.382-7 Built in gains and losses.

(a) * * * Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455 or Rev. Proc. 2004-34 (2004-1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (see §601.601(d)(2)(ii)(b)).

* * * * *

§1.451-5 [Removed]

Par. 4. Section 1.451-5 is removed.

§1.861-18 [Amended]

Par. 5. Section 1.861-18 is amended in paragraph (i)(4) by:

1. Removing Example 2;
2. Designating Examples 1 and 3 as paragraphs (i)(4)(i) and (ii), respectively;

and

3. In the heading for newly designated paragraph (i)(4)(ii), removing “3” and adding “2” in its place.

§1.6655-0 [Amended]

Par. 6. Section 1.6655-0 is amended by removing the entries for §1.6655-2(f)(3)(i) and (f)(3)(i)(A) and redesignating the entry for §1.6655-2(f)(3)(i)(B) as §1.6655-2(f)(3)(i).

§1.6655-2 [Amended]

Par. 7. Section 1.6655-2 is amended by removing the paragraph (f)(3)(i) heading and paragraph (f)(3)(i)(A) and redesignating (f)(3)(i)(B) as (f)(3)(i).

Par. 8. Section 1.6655-6 is amended in paragraph (c) by:

1. Revising the heading and introductory text;
2. Removing Example 1;
3. Designating Example 2 as paragraph (c)(1) and revising the heading of newly designated paragraph (c)(1); and
4. Adding reserved paragraph (c)(2).

The revisions read as follows:

§1.6655-6 Methods of accounting.

* * * * *

(c) Example. The following example illustrates the rules of this section:

(1) Example. * * *

* * * * *

**PART 602 – OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION
ACT**

Par. 9. Add an authority citation for part 602 to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 10. Section 602.101 is amended by removing the entry for §1.451-5 in the table in paragraph (b) and by removing the parenthetical authority citation at the end of the section.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2019

David J. KAUTTER

Assistant Secretary of the Treasury (Tax Policy).

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